

REMARKS

This paper is a Response to the Final Office Action mailed August 21, 2009. Claims 40, 42 to 47 and 53 to 76 are pending. Claims 46, 47 and 61 to 76 have been cancelled without prejudice. Applicants maintain the right to prosecute the cancelled claims in any related application claiming the benefit of priority of the subject application. Claims 40, 42 to 45 and 53 to 59 are therefore under consideration.

Regarding the Claim Amendment

Claim 40 has been amended to recite the features of allowed claim 47 (and claim 46, from which claim 47 depends). Support for the amendment can be found in claims 46 and 47 as originally filed. Thus, no new matter has been added and entry thereof is respectfully requested.

Regarding the Restriction Requirement

Applicants respectfully request withdrawal of the restriction of claim 60, directed to a method that depends from the device of amended claim 40. Applicants respectfully request allowance of claim 60.

REJECTIONS UNDER 35 U.S.C. §103

The rejection of claims 40, 42 to 45 and 53 to 59 under 35 U.S.C. §103(a), as allegedly unpatentable over Coffman (WO 99/00168) in view of Berthelet *et al.* (FEMS Microbiol. Lett. 138:17 (1996)) is respectfully traversed. Allegedly claims 40, 42 to 45 and 53 to 59 would have been obvious in view of the cited publications at the time of the invention.

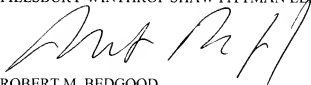
Claims 40, 42 to 45 and 53 to 59 would not have been obvious under 35 U.S.C. §103(a) in view of Coffman (WO 99/00168) and Berthelet *et al.* (FEMS Microbiol. Lett. 138:17 (1996)) at the time of the invention. Nevertheless, solely in order to advance prosecution of the application, claim 40 has been amended to incorporate the limitations of claim 47 as set forth herein. As claim 47 has been indicated to be allowable, the rejection is moot.

In summary, for the reasons set forth herein, Applicants maintain that claims 40, 42 to 45 and 53 to 60 clearly and patentably define the invention, respectfully request that the Examiner reconsider the various grounds set forth in the Office Action, and respectfully request the allowance of the claims that are now under consideration.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

A handwritten signature in black ink, appearing to read 'Robt M. Bedgood', is written over the printed name.

ROBERT M. BEDGOOD
Reg. No. 43488
Tel. No. 858.509.4065

Date: January 21, 2010
12255 El Camino Real, Suite 300
San Diego, CA 92130-4088
(619) 234-5000